

**Board Meeting Minutes
August 6, 2004**

**Board for Professional Engineers and Land Surveyors
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California 95833
(916) 263-2222**

Friday August 6, 2004

Board Members Present: James Foley (President), Cindy Tuttle (Vice President), Gregg Brandow, Robert Jones, William Roschen, Millicent Safran, William Schock, Elizabeth Warren, Michael Welch, and Edward Yu.

Board Members Absent: Arthur Duffy, David Fruchtman, and Dale Wilson.

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Debbie Thompson (Budget Analyst), Joanne Arnold (Acting AEO and Enforcement & Legislative Programs Manager), and Janeece Sargis (Examination Analyst)

Public Present: See Attached

1. Incoming Board President Takes Office

Outgoing President Brandow passed the gavel to President Foley.

President Foley presented outgoing President Brandow with a plaque and a proclamation.

2. Roll Call to Establish a Quorum

The meeting was called to order by President Foley at 9:10 a.m. Roll call was taken, and a quorum was established.

3. Public Comment

Donald Coe, ME, requested that the Board consider an inactive status. He stated that most states have an inactive status, where a licensee can notify the licensing agency that he wants to place his license in an inactive status and then

reactivate it later. He said that Pennsylvania is a good model for the inactive status.

President Foley asked if legislative changes would be required to enact an inactive status. Mr. Duke advised that there is a general provision in the Business and Professions Code that would authorize the Board to adopt regulations to create an inactive status. Mr. Duke explained that the Board discussed an inactive status several years ago and, at that time, decided to create only a retired status. President Foley directed staff to research issue of inactive status and bring the information to future Board meeting.

Bob DeWitt, representing CELSOC, advised that one of his organization's members had asked him to ask the Board about a response to a letter he had sent in December about the Codes of Professional Conduct. Ms. Eissler advised that she would look into what had happened to the letter and would send a response.

Dr. Brandow asked Mr. DeWitt if CELSOC was still planning to submit comments about the Codes of Professional Conduct, as had been indicated at previous meetings. Mr. DeWitt stated that CELSOC would be submitting the same comments from its attorney, Jim Corn that had been submitted during the public comment periods of the rulemaking process. Dr. Brandow suggested it would be helpful if the comments focused on actual issues encountered by licensees since the regulations became effective.

4. Closed Session

The Board went into closed session at 9:25 a.m.

Vice-President Tuttle arrived at 9:45 a.m.

5. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board adopted the results of the take-home examinations for the candidates who had previously passed the 8-hour portions of the required examinations and adopted the cut score for the State Specific Professional Land Surveyor Examination of 186 out of 399. The pass rate for this exam was 14.75%

Ms. Christenson reported that the Board adopted the Stipulation regarding Daniel Jahns, adopted the Proposed Decisions regarding Daniel J. Cook and Keith Douglas Masuda, and denied the Petition for Reconsideration of Zuhayr Toufic Nizam-Aldine.

Ms. Christenson reported that the Board discussed pending litigation as noticed, specifically Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492.

6. **Approval of Consent Items (Possible Action)**
(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)
- a. **Approval of the Minutes of the June 25, 2004, Board Meeting**
- MOTION:** Dr. Brandow/Mr. Schock moved to approve the minutes of the June 25, 2004, Board meeting.
- VOTE:** 10-0, motion carried.
- b. **Approval of Candidates for Certification/Licensure (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)**
- MOTION:** Mr. Schock/Ms. Safran moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.
- VOTE:** 10-0, motion carried.
7. **Approval of Delinquent Reinstatements (Possible Action)**
- MOTION:** Vice-President Tuttle/Mr. Welch moved to approve the Delinquent Reinstatements as follows:
- Mechanical**
1. **David Stitt**
Reinstate applicant's mechanical license once he/she takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.
- VOTE:** 10-0, motion carried.
8. **Comity and Temporary Authorization Applications (Possible Action)**
- MOTION:** Mr. Schock/Mr. Welch moved to approve the Amended Handout Comity List.
- VOTE:** 10-0, motion carried.
9. **Approval of Washington State Specific Structural Engineering Examination for Comity (Possible Action)**

Dr. Brandow reported that Washington and California used the 16-hour California exam until 1998. Washington then switched to the National and their own State Specific exam; California will be switching to National and their own State Specific exam in October 2004. There is a question as to whether Washington's State Specific examination should be considered equivalent to California's new State Specific examination for Comity purposes. At the Board's request, a few structural engineers have reviewed the Washington examination for equivalency.

Kenneth Luttrell, S.E., reported that he has reviewed the Washington exam and that it covers seismic issues, includes optional bridge problems which seem to be quite difficult, and that the building problems seem easier than California's exam. He also stated that the Washington exam is shorter than the California exam and that he finds it difficult to recommend the Washington exam for comity.

Mr. Schock asked what the experience requirements are for the SE exam in Washington.

Dr. Brandow stated that the experience requirements are 8 years for the CE and then an additional 2 years after the CE to get the SE.

President Foley asked if California has bridge problems.

Dr. Brandow stated that there is no response in that area on the occupational analysis. Schools and hospitals require SE in CA, however not for bridges. WA requires a SE for bridges.

Ms. Crawford reported on some of the comments from the SE exam team leaders.

- CA exam uses UBC with CA Building Code tweaks and WA uses UBC/IBC, so testing different codes.
- CA uses 50% multiple choice and can test more breadth on knowledge; WA has 4 design problems.
- They thought that WA has a good exam, but not as good as CA.

Dr. Brandow stated that WA does not have a test plan, that CA is more rigorous in developing a test plan. He also stated that WA has a pass rate of 60% and that CA has a pass rate around 45%.

Ms. Christenson stated that when both states used the 16-hour exam, WA had a better pass rate.

Mr. Schock asked why WA stopped using the CA exam.

Ms. Christenson stated that they wanted bridge problems and thought that CA had too much power to decide what went on the exam. Also, NCEES was pushing the National SE II exam, so they went to that.

Ms. Safran asked whether we can decide later not to grant comity if there are disciplinary problems.

Dr. Brandow reported that CA, WA, and IL Boards are talking about developing a National SE III exam.

MOTION: Ms. Safran/Mr. Yu moved to accept the Washington State-Specific Structural Engineering examination as equivalent for comity.

Mr. Schock stated that he is going to vote against the motion because he has concerns with exams testing difficult building codes.

Dr. Brandow wanted to know if the Board could say, taking and passing SE exam with building problems only would be OK for comity, but if they took bridge problems, then comity would not be granted.

Mr. Roschen asked if the issue of code difference is substantial.

Dr. Brandow stated that WA will use IBC and CA will be using UBC/CBC next year.

Mr. Duke stated that if CA exam only tested building and not bridges, we could just grant comity to WA SE's who did building problems and it would be considered an equivalent exam.

President Foley stated that he hasn't seen any discipline against out-of-state engineers practicing here and asked if this is really a problem.

Mr. Lutrell does plan review for State agencies and he does see problems with plans done by engineers in other states who are licensed in CA.

Mr. Jones asked if the issue is just comity with WA and not other states. If someone is a Bridge Engineer in WA, does that person have to be a SE?

Dr. Brandow stated that WA SE has to do some building problems and then chooses between building and bridge for other problems.

President Foley stated the bridge engineer is a part of SE.

Mr. Jones asked if they still have to know SE.

Dr. Brandow stated that in CA, SE's can do schools and hospitals.

Ms. Crawford stated that CE's in CA can design all buildings and bridges except for schools and hospitals. So, CA SE exam focuses on schools and hospitals and focuses on those building codes.

Mr. DeGraf, CLSA, asked if WA grants comity to CA SE's and allows them to do bridges.

Ms. Crawford stated, yes they do.

President Foley asked who can design bridges in WA; SE's or CE's? Dr. Brandow stated that SE's can design bridges in WA.

Mr. Duke stated, if limited to just building problems, have to constantly determine what is on each exam.

Ms. Crawford stated that we would have to find out if WA can tell us which problems individual candidates answer.

Ms. Safran and Mr. Yu withdrew their motion.

Mr. Duke asked which license is needed to design bridges in WA.

Ms. Crawford stated that both the CE and SE are required.

MOTION: Vice-President Tuttle/Dr. Brandow moved to approve the Washington State-Specific Structural Engineering examination for comity as long as the candidate took only the elective building questions and not the bridge questions; and only if staff can get that information from the Washington Board. If staff cannot get the information, then this issue would be brought back to the Board.

Dr. Brandow stated that a person has to get CE license in CA before getting SE license, and to get the CE license, they have to take Special Civil exam.

Mr. Duke stated that the legislative intent behind comity is to have a mechanism to provide recognition for licensees in other states.

Mr. Duke also stated that test plan dictates exams and if you start picking and choosing questions from specific exams, you would get questions/issues with all other exams and qualifications.

Mr. Jones feels it should be all or nothing.

Vice President Tuttle and Dr. Brandow withdrew their motion.

MOTION: Ms. Safran/Mr. Jones moved to accept the Washington State-Specific Structural Engineering examination as equivalent for comity.

VOTE: 9-1, motion carried. Mr. Schock was opposed.

10. Administrative (Possible Action)

a. Fund Condition (Possible Action)

Ms. Thompson reported on the fund condition dated July 15, 2004. The projected application revenue decreased from \$3,516,620 to \$2,902,936 due to the drop in exam applications received this FY. This is because, for FY 2003/04, 2,075 less applications were received as compared to FY 2002/03. Ms. Thompson did point out also that a portion of this decline was a result of individuals applying early in June of FY 2002/03 to avoid the fee increase that took effect July 1, 2003. A deficit is projected in FY 2008-09.

b. FY 2003/04 & 2004/05 Budgets (Possible Action)

Based on the May 31, 2004 expense reports, Ms. Thompson reported that there is a projected \$192,851 in excess budgeted funds available after projected expenditures for this FY. The increase in projected excess funds available after expenses results from savings in subject matter expert expenses. Calculations of SME expenses through the end of June 2004 show an expense of approximately \$388,000 instead of the projected \$400,000. The estimated balance in FY 2004/05 after projected expenditures is \$286,555. This will likely reduce once benefit increases are available during the first quarter of FY 2004/05.

c. FY 2005-06 Budget Change Proposals

The Board is still working with DCA for revisions to the Enforcement Positions BCP that requests funding for staff to work the ongoing caseload that has increased and to eliminate the backlog that's resulted from this growth. The number of positions requested has increased to 1.5 permanent positions and 3.0 two-year limited term. The number of staff requested has changed because they're now justified using the number of cases that should be closed each year based on the Enforcement Performance Measures.

d. Publication Review

Ms. Thompson informed Board members that the postcard informing licensees of bulletin's availability on the website won't be done until FY 2004/05 due to limited staffing available to work on the bulletin. Ms. Christenson informed Board members that the Board could initiate a contract with someone to redesign the Board's Bulletin without going through the formal bid process if the contract was less than \$5,000. The

Board has also considered hiring an individual under temporary help to work on the bulletin with salary savings from another position vacancy.

Ms. Thompson reported that the City and County Building Officials Guide is the next publication in need of update as it was last updated in 1998.

President Foley appointed a subcommittee of Mr. Welch and Mr. Schock to review the City and County Building Officials Guide and work with Enforcement staff for suggested revisions.

e. Amendments to Board Rule 407

Ms. Thompson reviewed background details regarding the Board's projected deficit that justify the need for amendments to Board Rule 407. The Board's exam population grew by an average of 9% each FY from FY 1997-1998 to FY 2002-03. For this reason, the FY 2003-04 exam application revenue projections included the 9% growth in revenue or \$4,284,000 in revenue for applications. However, the number of FY 2003-04 applications received dropped by 2,075 by year-end. In addition to the drop in revenue for these 2,075 less applications, the Board's projected revenue also excluded the 9% growth factor. The two drops combined result in a revised application revenue projection of \$2,809,000 by year-end for FY 2003/04. This drop also will cause the Board to fall below a one-month reserve in FY 2004-05. Historical cost increases required of the Board show that at least a two-month reserve should be maintained and Department of Finance recommends at least a 3- to 6-month reserve.

MOTION: Ms. Safran/President Foley moved to have Board staff begin the regulation process to amend Board Rule 407 (c) as follows:

"The two-year biennial renewal fee for a license for renewal of a license that expires on or after July 1, 2003 shall be \$150. ~~The Fee for renewal of a license that expires on or after July 1, 2005 shall be \$100.~~

VOTE: 10-0, motion carried.

11. Enforcement

a. Update regarding Rulemaking Proposals, including but not limited to Board Rules 404.1 & 404.2 (Definitions of Responsible Charge) and Board Rules 472.1, 473, & 473.1 (Citation Program) (Possible Action)

Ms. Eissler reported that the Office of Administrative Law approved the increase in the maximum amount of the administrative fine which can be ordered in a citation as a non-substantive, conforming change since the statutory maximum had been increased. Therefore, it was not necessary to go through the full rulemaking process to amend Board Rules 472.1

and 473.1. Ms. Eissler advised that the proposed amendments to Board Rules 404.1, 404.2, and 473 had been noticed for public comment on July 30, 2004. The period for submitting written comments ends on September 13, and a public hearing will be held on September 17 in conjunction with the Board meeting scheduled for that day. She advised that only one comment had been received to date; the person indicated that he liked the proposed changes to Board Rules 404.1 and 404.2 regarding responsible charge.

b. Amendments to Board Rule 418 (Criteria for Rehabilitation) (Possible Action)

Ms. Eissler reviewed the information in the agenda packet. She explained that the proposed language was based on the discussions at the April Board meeting regarding the criteria for rehabilitation. She advised that if the Board had no further changes at this time, the Board would need to approve the language and direct staff to begin the rulemaking process.

MOTION: Mr. Schock/Ms. Safran moved to approve the proposed amendments to Board Rule 418 regarding the Criteria for Rehabilitation and to direct staff to begin the formal rulemaking process.

VOTE: 10-0, motion carried.

12. Legislative

a. Discussion of Proposed Legislation for 2004, including but not limited to AB 320, AB 1265, AB 1826, AB 1976, SB 1547, SB 1735, and SB 1914 (Possible Action)

Ms. Arnold reported that SB 1914 has gone to Assembly floor; SB 1728, AB 1265, AB 1826, and AB 1976 are dead; AB 320 is moving through to Senate floor; SB 1547, the Board's Sunset Bill, is to be heard in committee next week; and SB 1735 is also to be heard in committee next week.

Ms. Arnold also reported that bills must make it be out of the committees by August 13, 2004, the legislative session ends on August 30, 2004, and the Governor has until September 30, 2004, to veto the bills, otherwise they will become law with or without his signature.

b. Regulation Status Report

No further report.

13. Examination Qualifications

a. Special Civil Occupational Analysis (Possible Action)

Ms. Christenson advised the Board that based upon the returned pilot surveys, no one indicated that they perform engineering surveying. The impact of this may affect the RFP that is being reviewed by DCA for test

development services for the Special Civil examinations. She suggested to the Board that they consider a format change for the exam to either a take-home exam or a much shorter examination if the population as a whole indicates that civils are not performing engineering surveying. She further advised that if few responses are received, this may drop out of the occupational analysis and the Board may have to look at a legislative change to remove the testing of this area.

Several Board members stated their concern that engineering surveying is very important and should continue to be tested. They indicated that if staff needed direction immediately, the direction would be to keep the examination format as it is. Ms. Christenson advised the Board that no decision was needed today and that staff would keep the Board apprised as it goes through the occupational analysis process. She indicated that she would direct staff to work with DCA contract staff to determine how best to deal with this situation should the scope of the RFP needs to be changed after the RFP is released.

14. NCEES Annual Meeting (Possible Action)

Ms. Christenson reported that Mr. Brunner indicated some changes to Land Surveyor Model Law will be presented and that the Board has supported changes in the past.

**15. Technical Advisory Committee Reports
(No Committee Meetings were held.)**

a. Board Assignments to TACs (Possible Action)

Ms. Christenson advised that the TACs can meet more than once per year now; however, the Board's budget is an issue. She explained that there are probably sufficient funds for each TAC to meet once, or if some TACs do not meet, other TACs could meet more often.

President Foley stated that the TACs should only meet if they have a need to meet. Ms. Christenson will have staff discuss with TAC liaisons and develop work plans/budgets.

b. Appointment of TAC Members (Possible Action)

Mr. Welch stated that he, Ms. Safran, and Mr. Brunner will have names for appointment at next Board meeting.

16. Liaison Reports (Possible Action)

a. ABET

Santa Clara in October 2004

b. NCEES

No report

c. Technical and Professional Societies

No report

17. President's Report

President Foley thanked staff for all their hard work.

Regarding Standing Committees, President Foley feels we really only need E/Q to review delinquent applications. All Board members interested in participating in discussions, really seems committees redundant, and could just have public/professional assigned to each area, Leg/Enf/Admin.

President Foley would also like to change order of items to consolidate closed session and have at end of Board meeting and get rid of EQ and just delegate to staff/Board.

18. Executive Officer's Report

1. Administration Report

a. Executive summary report

No additional report given.

b. State budget

None

2. Personnel

a. Hiring freeze

Ms. Christenson reported that the Hiring Freeze ended June 30, 2004.

b. Vacancies

Ms. Christenson reported that the Assistant Executive Officer position is vacant and that there are problems with filling it. In the meantime, Ms. Arnold is the Acting Assistant Executive Officer.

3. Enforcement/Examination/Licensing

a. College Outreach

No report given.

b. Report on Enforcement Activities

No report given.

c. Report on Examination Activities

No report given.

4. Publications/Website

a. Website Activity Statistics

No report given.

5. **Sunset Review & Report**
No report given.
6. **Other**
 - a. **DCA update**
Ms. Christenson advised that the California Performance Review (CPR) report had just been released. It contains a recommendation that would make Board into a bureau. Ms. Christenson stated it would be a good idea to go to the hearings and give testimony and to send letters.

Mr. Jones stated that he believes converting boards into bureaus is a bad idea because the public would lose the ability to see how government works and to participate in government.
19. **Approval of Board Travel (Possible Action)**
No Board travel.
20. **Other Items Not Requiring Board Action**
 - a. **Date of next Board meeting: September 16 & 17, 2004, Glendale, California**
No other items.
21. **Adjourn**
The Board adjourned at 1:40 p.m.

PUBLIC PRESENT

Carl C deBaca, CLSA
J. “Jed” DeGraff, CLSA
Lee Adler, SEAOC
Tom Vandenberg
Donald Coe
Bob DeWitt, CELSOC